Supreme Court of the United States

OCTOBER TERM, 1938.

No. 10.

THE UNITED STATES OF AMERICA,
Petitioner,

v.

ONE 1936 MODEL FORD V-8 DE LUXE COACH, MOTOR NO. 18-3306511, COMMERCIAL CREDIT COMPANY,
Claimant.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Fourth Circuit.

SUPPLEMENTAL BRIEF FOR THE CLAIMANT ON RE-ARGUMENT.

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This case is before the Court on the Government's petition for re-argument. The case originally came before this Court upon writ of certiorari directed to the United States Circuit Court of Appeals for the Fourth Circuit under Section 240 of the Judicial Code, granted on April 4, 1938 by this Court on application by the Government. After argument of the case this Court, on October 17, 1938, rendered a *per curiam* decision affirming the judgment of the Circuit Court of Appeals by an equally divided Court (305 U. S. IV). Thereafter, the Government filed a pet

tion with this Court for a re-hearing before a full bench, and the petition was granted on November 7, 1938. The judgment of affirmance theretofore entered was vacated, and the case restored to the docket for re-argument (305 U. S. XXVII).

Statute Involved.

The statute involved is set forth in the claimant's brief on the original argument, pp. 2-3.

Statement.

The statement of facts of this case is set forth in the claimant's brief on the original argument, pp. 3-5.

Summary of Argument.

The Government raises no new point in its supplemental brief on re-argument. It again contends, as it contended in its original brief, that the courts below erred in holding that claimant had complied with subdivisions (2) and (3) of Section 204 (b), Title II of the Liquor Law Repeal and Enforcement Act of August 27, 1935 (hereafter referred to as Section 204 (b)). Claimant contends otherwise. The issue in this case is whether the statute requires claimant to investigate a person of whom according to the stipulated facts "it had no knowledge, information or suspicion" (R. 20) as a condition precedent to jurisdiction of a court to remit or mitigate a forfeiture (See also pp. 5-8, claimant's original brief).

ARGUMENT

I.

The legislative intent in the enactment of Section 204 (b) was to protect the interests of innocent lienors.

Obviously any construction given to Section 204 (b) must take into account the purpose for which it was enacted, having regard to the evil intended to be remedied, as well as contemporaneous legislative pronouncements which may guide the Court toward arriving at the construction intended by Congress. The legislative intention must be ascertained. *Ebert* v. *Poston*, 266 U. S. 548.

The Government's supplemental brief admits, at page 11, that the intent of the statute was to relieve innocent lienors against harsh condemnations of their interests in property, and it has been frequently stated in cases similar to the instant one that the purpose of the statute was to ameliorate the hardship suffered by innocent lienors as a result of the forfeiture laws.

> *C. I. T. Corporation* v. *United States*, 89 F. (2d) 977 (C. C. A. 4th);
>
> *Wilson Motor Co.* v. *United States*, 84 F. (2d) 630 (C. C. A. 9th).

In *C. I. T. Corporation* v. *United States, supra*, the Circuit Court of Appeals for the Fourth Circuit said at page 979:

> "Manifestly the act was passed to ameliorate the hardships suffered by innocent lienors from the seizure of offending vehicles, and the reference in the third condition of the act to interests of the claimant and of the violator of the law in the vehicle

> under a contract or agreement shows that Congress had especially in mind the rights of finance companies under conditional sales contracts which undoubtedly constitute the most numerous class to which the act applies."

Since the instant case was decided, the case of *United States* v. *Automobile Financing, Inc.*, 99 F. (2d) 498 (now before this Court, No. 627 present term) was decided by the Circuit Court of Appeals for the Fifth Circuit. The facts of that case are very similar to those of the instant one, and the Court held that the long legislative and judicial history of the statute here involved, as well as the Committee reports, all tended to support the construction now urged by this claimant. The Court said at page 500:

> "The long legislative and judicial history of the struggles of those engaged in a large and legitimate industry, automobile financing, to protect themselves and their industry from the ruinous consequences of wholesale forfeitures, unreasonable and unjust as to them from the standpoint of bona fides, and the committee reports accompanying the passage of the Remission Act, all conspire to support, as the construction intended for the Act, that in the absence of circumstances putting them upon notice, persons dealing with automobile paper in due course and in good faith, may deal with it upon the faith of the ownership being as it appears upon the papers to be; and that, if they have made the prescribed inquiry as to the owners so appearing, the Court, in the exercise of a sound discretion, may remit the forfeiture as to them."

The District Court in the instant case likewise considered at length the legislative history of the statute and concluded that Congress had never intended to require

lienors to investigate, at peril of losing their security, persons, unknown to them who were the real purchasers of the vehicle.

A careful analysis of the report of the Chairman of the Senate Judiciary Committee on July 29, 1935 (Senate Report No. 1330, 74th Cong., 1st Session), and of the Chairman of the House Judiciary Committee on July 22, 1935 (House Report No. 1601, 74th Cong., 1st Session) bears out the contention of claimant that the intent of Congress was that lienors were required only to investigate persons known to them. The reports referred to above state, both at page 6, regarding the third condition precedent in the statute:

> "This last requirement is predicated upon the recognition of the 'bootleg hazard' as an element to be considered in investigating a person as a credit risk. As a matter of sound business practice, automobile dealers, finance companies, and prospective lienholders on automobiles examine records, and make inquiry of references and credit rating agencies as to the owner's or prospective purchaser's reputation for paying his debts and his ability to do so. This subsection *merely* requires that in the making of such inquiry, the 'bootleg hazard' also be examined as one aspect of the credit risk." (Italics ours.)

The clear implication of the reports is that lienors are now to investigate the bootleg hazard, in addition to the investigation they already make as a matter of sound business practice. Since the claimant can investigate only those of whom it has knowledge, obviously the bootleg hazard now required to be examined is a hazard in connection with the same persons. It is submitted that the language of the reports, stating that the subsection "merely" requires

the investigation of an additional hazard accords with the construction urged by claimant and would be totally unsuited to a description of such a requirement as the Government contends for, which would require the making of an investigation totally different from the investigation described in the reports.

Similarly, at the hearing on the bill (Senate Bill 3336) before the Senate Judiciary Committee, August 15, 1935, a representative of the Treasury Department which sponsored the bill testified as follows (See Minutes of Hearing, p. 13):

> "This section is of particular importance in connection with the discounting by a finance company of an automobile dealer's paper.
>
> "At the present time, the Secretary of the Treasury considers that the bootleg hazard is an element involved in the credit risk, and is just as much a part of the investigation by the finance company of a person as a credit risk as is his financial standing in the community. He requires that before a car be returned to the person claiming an innocent interest, the latter must prove that he made an investigation as to whether or not the purchaser had a bootlegger record, and found that he had none."

His testimony, too, is compatible with the claimant's contention that the statute does not place upon it a new burden so heavy as to be practically insuperable, but instead merely requires it to add to its customary credit investigation of a purchaser an additional examination of the bootleg hazard.

Moreover, in the enactment of Section 204 (b) Congress was continuing its purpose of protecting innocent lienors in forfeiture cases for liquor law violations. R. S. 3450 (26 U. S. C. 1441), under which these forfeitures are made,

was enacted in 1866 primarily to protect the public revenue in moonshine cases. When the Prohibition Amendment was adopted and enforcement laws were enacted, Congress recognized that the great new national industry in automobiles had developed since the enactment of Section 3450, and needed equitable protection against seizures under that harsh statute of which, in *J. W. Goldsmith, Jr.-Grant Co. v. U. S.*, 254 U. S. 505, a case arising before Prohibition, this Court had said at p. 510:

> "If the case were the first of its kind, it and its apparent paradoxes might compel a lengthy discussion to harmonize the section with the accepted tests of human conduct. Its words taken literally forfeit property illicifly used though the owner of it did not participate in or have knowledge of the illicit use. There is strength, therefore, in the contention that, if such be the inevitable meaning of the section, it seems to violate that justice which should be the foundation of the due process of law required by the Constitution."

Accordingly, Congress enacted Section 26 of the National Prohibition Act (41 Stat. 315, 27 U. S. C. 40) in order to protect the rights of innocent lienors, and this Court in a number of cases gave effect to the mandate of Congress.

Port Gardner Investment Company v. *United States*, 272 U. S. 564;

Richbourg Motor Company v. *United States*, 281 U. S. 528;

Davies Motors, Inc. v. *United States*, 281 U. S. 528;

Commercial Credit Co. v. *United States*, 276 U. S. 226.

After the repeal of Prohibition, innocent lienors no longer had the protective benefits of Section 26 of the National Prohibition Act, and became again subject to harsh forfeitures under Section 3450. Congress realized that the automobile industry, which had been born and had grown to be a major national industry long after the enactment of Section 3450, owed its growth in most part to a relatively new allied industry, automobile financing. Congress, therefore, as a matter of public interest, sought to continue in behalf of innocent lienors the protective features of former Section 26 of the National Prohibition Act by enacting Sections 204 (a) and (b) of the Liquor Law Repeal and Enforcement Act.

If the construction of Section 204 (b), sought by the Government, prevails, then the purpose and intent of Congress, shown by this legislative history, will have been ignored.

II.

"Reason to believe" as used in Section 204 (b) (2) must be based on specific and not general knowledge.

The issue involved in this case is a narrow one turning directly on the words of Section 204 (b).

It is the contention of the claimant that the words of the section are not susceptible of the construction which the Government attempts to place upon them.

The wording of subdivision (b) (2) requires that the claimant prove that he had at no time any knowledge or reason to believe that the car "*was being or would be used*" to violate liquor laws. (Italics ours.) The words "was or would be" are not the equivalent of "could or might be."

If Congress had intended that persons dealing with automobiles are chargeable with notice that the cars might be used in violation of the liquor laws, and therefore have reason to believe that automobiles would be so used, Congress would have employed available words appropriate to its purpose. Admittedly cars might be used for an illegal purpose, but this fact does not warrant the contention of the Government that all cars might be so used. Congress had in mind a specific car, because it uses the singular pronoun "it" in (b) (2), which says, "reason to believe that *it* was being or would be used in violation of law." (Italics ours.) Obviously the statute refers to specific knowledge or reason to believe, concerning a specific car, and not a general knowledge, as alleged by the Government, that all cars are susceptible to being used wrongfully. If the Government's contention is sound, then an innocent claimant in every seizure would have "reason to believe" that the car would be used in violation of the liquor laws, and the effort of Congress to protect innocent claimants would be an idle gesture.

The Government attempts (pp. 10 and 11 of the Government's supplemental brief) to impute to claimant specific knowledge that the car in question might be used to violate the liquor laws, because of a general knowledge of persons dealing in automobiles and in automobile finance paper that automobiles are adaptable to use in violating the liquor laws. In support of its contention, the Government, in a footnote on page 10 of its supplemental brief, sets forth a tabulation showing that a total of 5,111 cars and trucks were seized in 1936, 4,463 in 1937, 4,225 in 1938, and 2,998 in eight months of 1939. The official figures of registrations of cars and trucks in the various states, fur-

nished to us by the Automobile Manufacturers Association, show that, in 1936, 28,165,550 passenger automobiles and trucks were registered, in 1937, 29,705,220 were registered, and from the latest figures available over 29,210,000 were registered in 1938. It is interesting to note that in 1936, when the car in question was seized, the total seizures were only eighteen thousandths of one per cent. of the total registrations. It seems absurd to conclude, because 5,111 cars and trucks were seized in 1936, that therefore parties dealing in automobiles had reason to believe that 28,165,550 cars and trucks might be used in violation of the liquor laws. Furthermore, the Government's tabulation does not reveal in how many of the seizures it enumerates petitions for remission were filed, or how many of the seizures involved straw purchasers. It is believed by the claimant that the percentage of seizures involving straw purchasers, if calculated would be very small.

The Government attempts to establish some form of estoppel against the claimant in this case, because it says that the greatest risk of automobile finance companies is the danger of seizure of vehicles for violation of liquor laws, and that, because of the claimant's long experience in the business, it cannot assert that it was unaware of this hazard, particularly, says the Government, because on three different occasions, before the enactment of the present law, this claimant had sought relief in courts against forfeiture of automobiles (p. 10 of the Government's brief).

We admit that there is such a hazard, but we do not admit that it is the greatest hazard. Apparently the Government knows nothing about the existence of the automobile financing risks of theft, conversion, fire, collision,

attachment and various other hazards. However, because of the fact that the claimant took all reasonable and necessary steps to protect itself in the case at bar, in accordance with the provisions of the statute, not only by making its usual credit investigations, but by inquiring of two law enforcement agencies to determine whether a bootleg hazard was present (R. 19), the claimant cannot be accused of ignoring the risk of seizure for liquor law violations.

Moreover, it is interesting to observe that in the three cases cited in the footnote of the Government's brief (supplemental brief, p. 10), the claimant, Commercial Credit Company, was successful before this Court and the Fourth and Sixth Circuit Courts in establishing its good faith, and its right to the protection afforded innocent lienors by the enactments of Congress. We are unable to follow the Government in its contention that because we have been successful before this Court and other courts in forfeiture cases, therefore we are estopped in the case now at bar. It is unreasonable and seemingly unfair for the Government to urge that the claimant is estopped in this case because the claimant will not assume the impractical business policy of considering in each one of its many hundreds of thousands of transactions with purchasers of automobiles, that those purchasers are straw purchasers for unknown bootleggers. On the contrary, the claimant, because of its experience, has the right to assume that people of good reputation generally do not lend their names to further the activities of bootleggers. Particularly is this true in view of the claimant's credit investigations and investigations with law enforcement agencies. It is contrary to actual business experience and an unwarranted application of the doctrine of imputed knowledge to say that all cars financed

by the claimant are likely to be used to violate the liquor laws, or that they are apt to be used by persons other than those who sign the conditional sale contracts.

III.

Section 204(b) requires no investigation of persons of whom claimant has no knowledge, information or suspicion.

The language of Section 204 (b) (3) of the statute requires, as a condition precedent to a remission of forfeiture, that the claimant should inquire of stated law enforcement agencies concerning the record and reputation of any person having a record or reputation for violating liquor laws, if the claimant's interest in the forfeited vehicle arises out of or is in any way subject to any contract or agreement *"under which"* such person has a right with respect to the vehicle. (Italics ours.) The plain words of the statute require only the investigation of persons of bad repute who have a right *under the contract* to which the claimant's interest is subject. It is clear in the instant case that the liquor law violator who was the real purchaser of the car and who was unknown to the claimant had no right under the contract to which claimant's interest is subject. Any rights that he had arose out of another contract between himself and the straw purchaser.

In discussing Section 204 (b) the Circuit Court of Appeals for the Ninth Circuit observed, in *Wilson Motor Co.* v. *United States,* 84 F. (2d) 630 (C. C. A. 9th):

> "A remedial statute of this character should be liberally construed in favor of the objects of its beneficence. Guardian Trust & D. Co. *v.* Fisher, 200 U. S. 57, 69, 26 S. Ct. 186, 50 L. Ed. 367."

The purpose of the statute, as we have shown above, was to ameliorate the hardships suffered by innocent lienors through forfeitures. The Government still maintains the position taken in the original argument that Section 204 (b) requires lienors to investigate at their peril parties having a latent connection with the vehicle, even though the lienors may, as stipulated in this record, have no knowledge, information or suspicion of the existence of such parties. The Government says, however, that if such an investigation is not required, then at least the claimant is required to show reasonable efforts to ascertain the real purchaser and user of the car, by inquiry of the fictitious purchaser and the dealer (pp. 4, 5, 13 and 15 of the Government's supplemental brief). The conditional sale contract in the instant case is not in the record, but if we may be permitted to go outside of the record, the Court might be interested to know that, as is the case in all contracts purchased by claimant, L. P. Walker, the purchaser in the instant contract, agreed not to use or permit the car to be used contrary to the laws in respect to toxicating liquors or narcotics, and the dealer answered in the negative the question "Have you any reason to believe the purchaser violates any laws concerning liquor or narcotics?", and the dealer also warranted that the contract was genuine and what it purported to be.

While this contract is not in the record in the instant case, there is in the record in No. 627 the contract between the dealer and the straw purchaser, in which the straw purchaser agreed not to "use or permit said automobile to be used in transporting intoxicating liquors or for other illegal purpose" (R. 10, in No. 627, *United States* v. *Automobile Financing, Inc.*). Also, the dealer warranted that the contract was what it purported to be, and "that all state-

ments of fact therein contained are true" (R. 12-13, in No. 627). Furthermore there is testimony by the manager of the claimant in No. 627 that he inquired of the dealer as to who the straw purchaser was and received an answer that he was honest, reliable and law-abiding (R. 39 in No. 627). It is naive in the extreme, therefore, to suppose that either the dealer or the straw purchaser would, in answer to an inquiry by the claimant, reveal the true facts. Certainly in case No. 627 the dealer did not reveal the true facts, and moreover, the covenant in the contract in No. 627 not to use or permit the car to be used in violation of the liquor laws appears generally in all contracts of finance companies. In the instant case it is stipulated that the claimant had no knowledge, information of even suspicion of the true facts (R. 20). It is unreasonable to assume, if the straw purchaser, the bootlegger and the dealer conspired to deceive the finance company, that they would upon inquiry tell the finance company the true facts.

Therefore this interpretation of Section 204 (b) (3) must be rejected because it would incorporate in the statute an absurd requirement calling for the doing of futile acts. The construction given a statute must square with common sense and sound reasoning. This Court said, in *United States* v. *Katz*, 271 U. S. 354:

> "All laws are to be given a sensible construction; and a literal application of a statute, which would lead to absurd consequences, should be avoided whenever a reasonable application can be given to it, consistent with the legislative purpose."

See also *In re Blalock*, 31 F. (2d) 612 (N. D., Ga.) and *International Ry. Co.* v. *United States*, 238 Fed. 317 (C. C. A. 2d).

Similarly, in *Missouri Pac. R. Co.* v. *Holt*, 293 Fed. 155 (C. C. A. 8th), cert. den. 264 U. S. 584 the Court said:

> "But conceding that an interpretation of the bare words of the act does not lead us to a clear understanding of their meaning and the true legislative intent, and that they need construction . . . no construction ought, or in justice can, be placed on them that would inevitably lead to absurd or impractical results."

Yet impractical and naive as the Government's suggestions with respect to inquiry are, it offers no other ideas as to how a claimant could comply with the interpreted requirement of reasonable investigation. There are no other investigations a finance company can make of the reality of the transaction at the time it is asked to purchase the contract. It cannot—even if it were practicable financially—employ investigators to determine who is using the car, because when it is asked to pass the credit the car is then in possession of the dealer and it must pass the credit immediately. The great flow of cars in commerce calls for immediate decisions on financing. The Circuit Court of Appeals for the Fourth Circuit in its decision in *C. I. T., Corporation* v. *United States*, 89 F. (2d) 977 observed,

> "Indeed if lienors who accept from dealers assignments of conditional sales contracts immediately after the execution of the papers are excluded from the benefits of the act, the purposes of the act to a large extent will be frustrated. It is common practice for automobile dealers promptly to assign conditional sales contracts to finance companies in order to secure at once the proceeds of the sales."

and the District Court in the instant case quoted this statement. R. 11. Even the Government does not advance the

suggestion that a finance company must, to comply with the statute, employ investigators to supervise the *use* of the car. Yet the claimant knows of no other means to employ in order to gain the benefit of the statute in cases like the instant one, should the Government's interpretation be adopted.

It is impossible to conceive that Congress intended to lay upon lienors this burden which is obviously insuperable. It did not intend to put them in the position of the liquor law enforcement agencies. *United States* v. *C. I. T. Corporation,* 93 F. (2d) 469 (C. C. A. 2nd).

A fortiori, the Government's stricter interpretation of the statute as containing an absolute requirement that the real purchaser be investigated would nullify it. Consequently, its interpretation should be rejected. It has always been an accepted canon of statutory construction that the effects and consequences of a given construction will be taken into consideration. *Carnill* v. *McCaughn,* 30 F. (2d) 696 (E. D. Pa.) aff'd 43 F. (2d) 69 cert. den. 283 U. S. 825.

On the other hand, it is more than doubtful whether the Government's interpretation of the statute would really aid in the collection of the revenue by breaking up the illicit liquor traffic. The Government implies (Government's supplemental brief, p. 8) that the claimant's interpretation of the statute enlarges opportunities to defraud the revenue.

This conclusion is unwarranted. Since the claimant cannot investigate persons of whom it has no knowledge, and cannot obtain knowledge, straw purchasers will get cars, however the statute is interpreted. The only effective result of the Government's interpretation of the statute will be to deprive innocent lienors of their property interests. Such a result, it is submitted, serves no useful or

practical purpose of the Government in the collection of its revenue, and is directly opposed to the intention of the statute.

IV.

The discretion of the District Courts will prevent remissions of forfeiture in suitable cases.

It should be noted that the construction contended for by claimant herein does not open the way to any chicanery by lienors. In deciding that lienors are only required to investigate persons known to them by the terms of subdivisions (2) and (3) of Section 204 (b), this Court will not deprive District Courts of the discretion given them under the statute in the remission of forfeitures. Thus in cases where the claimant has technically complied with the conditions precedent of the statute but has been guilty of any bad faith, or negligence amounting to bad faith, the District Courts can still in their discretion refuse to remit the forfeiture. For example, in *United States* v. *One Ford Coach Automobile,* 20 F. Supp. 44 (W. D. Va.), the straw purchaser had made false statements in his credit application which, if checked by the finance company, might have revealed the true state of affairs. In this case remission was denied.

Again in *C. I. T. Corporation* v. *United States,* 86 F. (2d) 311 (C. C. A. 4th) the purchaser had failed to answer in his application a question whether he intended to use the car for the transportation of liquor. The Circuit Court of Appeals for the Fourth Circuit held that the District Court had properly refused a remission of the forfeiture under the circumstances.

These cases are an example of the proper working of the statute here involved. It has not been contended by this claimant that a mere technical compliance with the terms of the statute should entitle a lienor to a remission as of right. The attendant facts and circumstances were intended by the statute to be weighed by the District Court which is given discretion to remit or mitigate the forfeiture.

Consequently, it is submitted that the interpretation contended for by claimant will not, as the Government assumes (Government's supplemental brief, p. 8), enlarge opportunities to defraud the revenue. The Government points out in its argument that except for the statute in question lienors would have no standing in court. Since, however, Congress intended in enacting the statute to give them a standing in court, this Court is urged not to deprive them of the benefits of the statute by a construction thereof which would result in a practical nullification.

Conclusion.

For the reasons stated in this brief and in the claimant's principal brief, the judgment of the courts below should be affirmed.

Respectfully submitted,

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